

**BOARD OF SELECTMEN
MEETING MINUTES
THURSDAY, APRIL 21, 2005
ABLONDI ROOM**

Attendance: Katherine E. Murphy, Chair; John H. Stasik, Vice-Chair; Charles J. Sisitsky, Clerk; A. Ginger Esty, Member; Dennis L. Giombetti, Member

Staff: George P. King, Jr., Town Manager; Mark J. Purple, Assistant Town Manager; Matthew A. Romero, Executive Assistant

The Chair called the meeting to order at 7:00 PM, and reviewed the agenda for the evening. Ms. Murphy announced that a public hearing on the TIF was being held that evening as well.

Public Participation

Joe Rizoli

Mr. Rizoli discussed an incident that had occurred prior to the meeting on April 14, 2005. He and a member of the Human Relations Commission (HRC) had had a verbal altercation the week before, and Mr. Rizoli explained his version of the incident. He asked if a person who was a member of the HRC should behave like that.

Jeffrey Buck

Mr. Buck discussed Mr. John Kahn's remarks in the April 14, 2005 meeting about what public participation ought to entail. Mr. Buck quoted portions of the Selectman's Handbook. Mr. Buck asked by what authority Ms. Murphy proposed to gather a summit to discuss the matter. He also asked why an ad hoc committee had not been formed.

Jim Rizoli

Mr. Rizoli asked if Ms. Murphy had to answer to anyone. He then discussed the hate crime that had occurred recently against Ms. Ilma Paixao of BRAMAS.

Robert O'Neill

Mr. O'Neill reminded and informed the Board of the events since the acceptance of the Arcade TIF.

Ms. Esty joined the meeting at this time.

William LeBarge

Mr. LeBarge expressed his dismay at the HRC's recent actions, including the actions of Mr. Kaye on April 14, 2005. He discussed his concerns with the problems for enforcing illegal immigration laws in Town.

Consideration of lodging house license renewals

Mr. King explained that the matter was largely administrative unless the Board had any questions. Mr. King confirmed that a request for renewal had to be actively pursued. Ms. Murphy explained that the Policy Subcommittee had reviewed the policy, and Mr. Purple had suggested bringing the policy to the new Board for review. Ms. Esty explained that one of the concerns had been the idea of having resident managers, but that

the idea had been challenged during the public hearing. Ms. Esty felt that the licenses should not be renewed until a decision had been made on the requirement to have a resident manager. Mr. Sisitsky agreed that it had begun with the question of resident managers, but that the policy submitted had become too detailed, and had been remanded to the Policy Subcommittee for review. Mr. Stasik agreed it was a good idea, and that the Policy Subcommittee should move forward with it. Mr. Giombetti asked what could be done with the license renewals pertaining to a policy change, or if the policy could be changed after the renewals. Ms. Murphy suggested discussing the most current version of the policy at the Board's next meeting.

MOVED: To revisit the license renewals for lodging houses after the Board reviewed the new lodging house policy.

Motion: Mr. Stasik

Second: Ms. Esty

VOTE: 5 – 0

Consideration of second hand/junk license renewals

Ms. Esty asked about Framingham Salvage and some drainage work being done near there. Mr. Sisitsky asked about 280 Irving Street because he believed they had closed. Mr. Sisitsky asked to confirm that every applicant on the list had actually applied for renewal. Mr. Giombetti agreed, and asked to see copies of each application.

MOVED: To table the licenses until copies of each applicant could be reviewed.

Motion: Ms. Esty

Second: Mr. Stasik

VOTE: 5 – 0

Consideration of the summer meeting schedule

Mr. King presented the Board with his proposed schedule through the end of summer 2005. Mr. Stasik suggested perhaps meeting on Monday nights instead, and Mr. Sisitsky suggested Tuesday evening, explaining he had some conflicts with Monday nights. However, Mr. Sisitsky offered to try meeting on Monday nights during the summer months to see how feasible it would be for him. He pointed out that many holidays fell on Mondays. Ms. Murphy suggested revisiting it next week, and Mr. King told the Board he would bring them an alternate meeting schedule reflecting the change.

Town Manager's Report

Wayside

Mr. King informed the Board that the issue was heard before the Zoning Board of Appeals (ZBA) on Tuesday, April 19, 2005. The ZBA decision would be made in the coming weeks. He explained that the issue might ultimately come to the Board because Wayside had agreed to go through the formal process to obtain a public way access permit. He suggested asking Town Counsel for an opinion as to what exactly could be considered and what the Board's options would be. Mr. Peter Sellers, DPW Director, explained that his job was to do the fact finding and the authority rested with the Board. Mr. Sellers clarified that he had had abstained from the Traffic Roadway and Safety Committee (TRSC) vote because he was using the meeting to gather data. Wayside had not fulfilled the process after that hearing. Ms. Esty had been under the impression that

the Board was the appealing authority, but she would accept the explanation that the Board was the granting authority. She cautioned individual statements of positions by Board members that might be misread as the position of the Board, should the Board become the appellate board. Ms. Esty suggested seeking outside Town Counsel for further review due to Mr. Petrini's prior opinion on the Building Commissioner's issuance of the building permit. Mr. Stasik asked who would begin the process. Mr. Sisitsky agreed that the process needed to be clarified by Town Counsel, and also suggested getting some traffic engineering advice. Ms. Esty compared the issue to the PUD with regard to the traffic flow and access. Mr. King agreed that he had misunderstood the by law and the process previously.

Brimstone Inspections

Mr. King acknowledged that there had been some concerns expressed by the Selectmen regarding the situation at the new Brimstone subdivision. He, Mr. Sellers, and Ms. Michele Grzenda, Conservation Administrator had conducted a site visit that morning. The issue was complicated, however. Part of the issue was that some of the materials were already broken. Mr. King admitted he was not an expert on the matter, but that his personal opinion was that some of the workmanship seemed deficient. He felt that a process needed to be put in place to supervise the quality of construction for these types of projects as it was being performed. Mr. Sisitsky asked if the departments who needed to sign off for the CO withhold signature until the systems could be assured they would be working properly. He acknowledged it was not a public road and not technically the Town's jurisdiction; however, once the residents moved in it would become the Town's problem, regardless. Ms. Esty suggested that confirming the road as a private road with its own services might be important. Mr. King explained that there was also a potential concern over an emergency access road that the Planning Board (PB) had required. However, since the road is strictly for emergency access, it begged the question of whether or not the Town was responsible for plowing it. Hopefully it was provided for in the PB decision to make the developer responsible for plowing all of the roads. Mr. Sellers had already informed the contractor that the collars were unacceptable, and would need to be reconstructed. Mr. Stasik asked for clarification as to whether the developer had been aware that the collars needed to be replaced or not, and Mr. Sellers stated that they had known for approximately the past month or so. Mr. Giombetti asked if there was an existing process to monitor projects as they were being built rather than afterwards. Mr. Sellers explained that there was a more stringent process for overseeing public way construction than private way construction, but there was a process.

Mr. King returned to the Wayside matter and clarified the process for public access permits by referencing the by law relevant by law.

Discussion of Town Meeting Articles

Article 15 – FY05 budget

Mr. Richard J. Howarth, Jr., Acting CFO, noted that he had sent a letter on April 13, 2005 updating Town Meeting Members on the status of the FY05 budget. He outlined some of the additional transfers that were being covered. Mr. King explained that this article adjusted the current fiscal year's budget, and that these items were being adjusted.

- 1) Snow and ice deficit
- 2) Energy deficit
- 3) Walsh Roof school budget
- 4) Interest on abatements
- 5) Legal costs

Mr. King stated that money was tight this year. Mr. King acknowledged there was just under \$400K in the reserve account, but that the entire amount had been earmarked to supplement the snow and ice removal budget. The Town was hoping for about \$335K from MEMA, and \$350K from the reserve fund, but additional funds would be needed. Mr. King hoped for a special appropriation from the state. Mr. King suggested writing a letter to the legislators asking for a special appropriation for snow and ice removal.

MOVED: To generate a letter to the legislators and ask for an additional appropriation for snow and ice removals for municipalities.

Motion: Mr. Stasik Second: Ms. Esty

VOTE: 5 – 0

Mr. Howarth outlined the three options for the Board:

- 1) Defer the deficit and raise it in FY06
- 2) Bring a request for transfer from departmental budgets in June
- 3) To use powers granted under Municipal Relief Act to transfer between departments without Town Meeting

Mr. King pointed out that the transfers would need to be done administratively within the last two months of the fiscal year. Mr. Stasik asked if this was a usual occurrence, and Mr. King explained that this year was worse than most because of the tight budgets and the extremely high snow budget. Mr. Giombetti suggested looking at the legal budget to find options for controlling increasing legal expenses. Mr. King explained that there were many legal requests despite a restrictive policy on access to Town Counsel, and there was a large amount of litigation the Town was involved with presently. Mr. Sisitsky recalled that a comparison had been performed to other communities, and the Town had a copy of report that had confirmed that they had a relatively limited legal budget.

MOVED: To endorse Article 15.

Motion: Mr. Stasik Second: Ms. Esty

VOTE: 5 – 0

Article 16 – FY05 Water budget

Article 17 – FY05 Sewer budget

Mr. Howarth requested deferring the articles back to the sponsor because no adjustments needed to be made.

MOVED: To defer Article 16 and Article 17 back to the sponsor.

Motion: Ms. Esty
VOTE: 5 – 0

Second: Mr. Sisitsky

Article 18 – FY05 Loring arena budget

Mr. Howarth explained that one outstanding contract was expected to be settled before the end of the current fiscal year. Mr. King explained that all enterprise fund appropriations required Town Meeting approval.

MOVED: To endorse Article 18.

Motion: Mr. Stasik

Second: Ms. Esty

VOTE: 5 – 0

Article 20 – FY06 Sewer budget

Article 21 – FY06 Water budget

Mr. King suggested having the articles considered at ATM. The Finance Committee wished to postpone the articles until June 2005. The Board discussed possible methods of reducing costs with Mr. Sellers.

Mr. Bill Haberman was concerned that the water and sewer rates needed to be set in early June, and if the FY 06 water and sewer budgets had not been approved it would delay the process. Mr. King suggested developing the rates based on the projected budgets, and then finalizing them upon the final passage of the budgets. Mr. Haberman explained that a difference of \$30K could affect the rates.

MOVED: To postpone Article 20 and Article 21 until June 2005.

Motion: Mr. Sisitsky

Second: Ms. Esty

VOTE: 5 – 0

Article 22 – FY06 Loring arena budget

Mr. King explained that this budget could move forward. Mr. Howarth presented the breakdown of the proposed budget to the Board.

MOVED: To endorse Article 22.

Motion: Mr. Stasik

Second: Mr. Sisitsky

VOTE: 5 – 0

Article 24 – Indemnification of retired police and fire

Mr. Howarth explained that this was for medical bills for retired police officers and firefighters for medical bills covering injuries incurred when they were on duty.

MOVED: To endorse Article 24.

Motion: Mr. Stasik

Second: Mr. Sisitsky

VOTE: 5 – 0

Article 5 – Miscellaneous Changes (continued)

Ms. Christine Long, Government Study Committee (GSC) Chair, explained that the GSC had voted to withdraw the article.

Article 6 – Bylaw – Term of appointments (continued)

Ms. Long read the language of the article, and explained the rationale behind the article. Mr. Winnett explained that the terms of this article would apply to salaried positions as well as committee appointments. Discussion ensued about the benefits and shortcomings of adopting the article. 21 Town employees would be affected by the adoption of this article. Mr. Giombetti asked if there had been any discussion in the committee making the language flexible to allow for mitigating circumstances. Mr. Sisitsky inquired about the motivations for presenting this article, asking if the recent extension of the Town Manager's contract had sparked the initial discussion. Mr. Sisitsky did not feel this article represented good government, particularly as it was developed in response to a specific action of the Board, and also pointed out that it was likely not legal. The relationship between the Manager and the Board was governed by state statute, which overruled Town by-laws. Mr. Stasik was concerned that there were no recommendations from the Personnel Board, and wondered how often the need to entice an individual to stay occurred. Ms. Murphy pointed out that Mr. Giombetti and former Board member Dr. Esther Hopkins had pointed out that it was standard practice. Ms. Esty believed that contracts for a term greater than five years would need to go before Town Meeting, and renewing them out of cycle might be circumventing the by-laws. Mr. Winnett pointed out that in the private sector there were not usually terms of appointments, and was unsure that the comparison to industry or academia was relevant.

MOVED: To table this article and seek a recommendation from the Personnel Board.

Motion: Mr. Sisitsky

Second: Mr. Stasik

VOTE:

Article 7 – Bylaw – Public Notice of Appointments (continued)

Ms. Long explained that this by-law was related to the previous article. Mr. King clarified that the proposed article would apply to professional appointments as well. He felt that it was constricting and perhaps demoralizing to contract employees, including the Police and Fire Chiefs to publicly post appointment expirations. Mr. Haberman explained it did not pertain solely to appointments by the Board, but also applied to other appointing authorities. Mr. Haberman also agreed that it would apply to professional appointments. Mr. Stasik agreed with the posting of expirations for non-salaried appointments, but he felt that it was impractical to post professional appointments. Mr. Sisitsky asked if the sponsor was prepared to make an amendment to the article by inserting the words "non-salaried" at Town Meeting. The Government Study committee confirmed that it would concur to making the suggested amendment.

MOVED: To endorse Article 7 subject to the inclusion of the words "non-salaried" as suggested by the Board.

Motion: Mr. Stasik

Second: Mr. Giombetti

VOTE: 5 – 0

Article 8 – Bylaw – Minutes of Meetings (continued)

Mr. Winnett reviewed the reasons as submitted in the background material for the proposed article. Mr. Giombetti asked if there would be an additional burden on the Town Clerk's office. Mr. King defended the Town Clerk suggesting that adding more of a burden to the office would be unfair.

MOVED: To endorse Article 8.

Motion: Mr. Stasik

Second: Ms. Esty

VOTE: 5 – 0

The Board recessed at 9:12 PM, at which time Mr. Sisitsky left the meeting. The Board resumed session at 9:28 PM.

Article 9 – Bylaw – Capital Project Planning Committee (continued)

Mr. John Howland, GSC member, discussed the reasons for Article 9 and Article 10 relative to the background material. Mr. Howland explained that the suggested capital budgeting process included in the article was based upon an existing published process put forward by the state. Moreover, these articles would require that the Board take a leading role in the capital budgeting process. This plan included three parts: a capital program, a capital budget, and policies and procedures. The committee had debated the specific makeup of committee, specifically if the Board should appoint the committee, or if staff should be on committee. The committee had decided to not have staff participate as voting members of the committee. Mr. Giombetti thought that giving the Board a central role in policy development was a good idea. Mr. Giombetti asked how the role of the Capital Budget Committee (CBC) would change. Mr. Howland felt that this article was consistent with the charge of the CBC in the CFO Act. Ms. Esty discussed the existing process, and expressed concerns over the CBC's access of information from department heads. Ms. Esty wondered if the proposed article would add an extra step that was not necessary. She felt that perhaps the existing system would be sufficient if it were correctly implemented. Mr. Howland pointed out that the proposed articles would leave the end process in tact, but would relieve the CFO of the burden of developing and prioritizing the initial budget recommendations and the long-term capital plan. Ms. Esty brought up her point from the previous week asking if a year-round CFO would be necessary if this process were adopted. Ms. Murphy asked what provisions were made in the plan for capital emergencies, and Mr. Howland pointed out that the Board could add the item to the plan without the CPPC. He acknowledged that one potential problem of the proposal would be how a citizen petition article requesting capital projects would be integrated into the Capital Plan. Mr. Howland pointed out that this would also open up the process to the public much more. Mr. Giombetti felt that the question of access to Department Heads by the CBC could be established by policy. Ms. Esty asked the Manager to elaborate on some of his previous concerns. Mr. King felt that there were two issues being discussed: the administration and the process. Mr. King felt that the process needed to be changed from the beginning to the end. He welcomed the idea of a broader base approach to the decision-making. Mr. King also wondered what the role of the CBC would be if this was approved, or if it was even needed.

Ms. Kathie McCarthy felt it would simply add another layer to the process. She felt that the CBC could have been expanded by adding members from various committees to it and also felt that the CFO should be handling the process. Mr. Stasik referred to the flowchart submitted by the GSC, and reviewed the process in greater detail. He asked what the distinction between the CBC and the Finance Committee (FC) was in the process. Mr. Howland explained that the FC only reviewed the capital budget in relation to the operating budget.

In response to a question from Ms. Esty, Mr. Ed Noonan, Town Moderator, said he could see both sides of the arguments, but he did not feel it was appropriate for him to speak on the articles at that time. He felt that interjecting an opinion at this time could influence the outcome of Town Meeting.

MOVED: To support Article 9.

Motion: Mr. Giombetti

Second: Mr. Stasik

VOTE: 3 – 1 (Ms. Esty)

Article 10 – Bylaw Capital Advisory Committee (continued)

Mr. Howland explained that Article 10 would clean up the language to make existing by laws consistent if Article 9 passed. If it did not, a substitute motion had been drafted. He explained the reasons for the by-law as contained in the backup material.

Mr. Haberman noted that the GSC had debated the issue to keep the CBC, and decided to keep it at least for now, and then remove it later if needed.

MOVED: To support Article 10.

Motion: Mr. Stasik

Second: Mr. Giombetti

VOTE: 4 – 0

Article 11 – Home Rule Petition – Recall Petition (continued)

Ms. Long felt that this article would protect the citizens, but noted that the reasons were very stringent, referring to the background material submitted. Ms. Esty felt that this was a good method of having checks and balances, but without allowing a recall to be too easy to achieve. Mr. Giombetti asked how many Towns had recall procedures. Mr. Winnett was not certain, but he believed that at least a dozen or so did; however Framingham would be one of the larger towns with such a procedure. Mr. Giombetti asked if the reasons for recall were very typical, and Mr. Winnett explained they were not. Mr. Giombetti had originally been concerned that the threshold for a recall might be low, but because the reasons were restricted, he felt comfortable with the proposed article. Ms. Murphy asked why the article was being presented, and Mr. Winnett explained that the issue had been referred to the GSC two years prior for review. The GSC's vote had been a clear majority. Ms. Murphy questioned the time frame, noting that the language as written included any election held in Town. Mr. Giombetti suggested amending it to refer to a local election. Ms. Murphy suggested waiting to see the amended language before taking a position.

MOVED: To table Article 11 until the amended language was provided.

Motion: Mr. Stasik

Second: Mr. Giombetti

VOTE: 4 – 0

Town Manager's Report

350 Irving Street

Mr. King explained that this property represented the largest amount of taxes owed to the Town \$811K in taxes with \$1M in interest. He explained that the amount owed outweighed the value of property, especially since the property was very contaminated. He had been approached by the current tenants who were interested in buying the property. A brown fields agreement was being negotiated between the tenant and the Town, including terms providing that the new buyer would pay the back taxes and the current taxes on the property over a three year period. If at the end of that time the taxes were paid and the property improved as outlined in the agreement, the Town would forgive the total interest owed. This agreement would need to be approved by Town Meeting. Ms. Esty wondered if the space could be used to rent out space for equipment and trucks to remain, and Mr. King stated that that would be one of the intended uses. Ms. Esty asked to look at the existing DEP conditions, and Mr. Giombetti pointed out that having restrictions on the property would not allow the property to be developed further. Mr. King explained the taxes had been accruing for 17 years or so.

Recommendation on CFO position

Mr. King explained that the CFO Act mandated that a CFO was required, and to remove the CFO would require a change in the law. However, the CFO Act did allow the Town Accountant or Town Treasurer to serve concurrently as the CFO, much like Mr. Howarth was acting as the Acting CFO at this time. Aside from amending the CFO Act, the only option the Board had in operating without a CFO would be to formalize the current arrangement. He pointed out that the major savings would be \$55,000, including an increase to Mr. Howarth's salary, the elimination of the Town Accountant's salary, and the addition of part-time help for the Accounting Department. Mr. King was concerned with the potential "burn out" factor if Mr. Howarth were to permanently assume both positions. Ms. Esty asked about the possibility of securing part-time staff help for the office during the busy periods. Mr. King explained that currently there was a staff person in the CFO's office and a vacant part-time secretary position. His thought was to eliminate the part-time position and upgrade the current staff position to the previous Assistant CFO position, so he thought that staff support would not be an issue. His concern was for the potential impact on the management level work.

Mr. Stasik did not feel comfortable not filling the position, and felt that the job needed to be in the hands of a highly trained individual. Mr. Giombetti concurred with Mr. Stasik. Mr. King agreed with their concerns about professionalism and consistency for the position and the Finance Division as a whole.

Mr. King estimated that the cost necessary to engage a professional consultant to recruit a CFO would be approximately \$10K.

MOVED: That the Town Manager proceed as soon as possible to search and secure a CFO through a professional municipal personnel recruiter.

Motion: Mr. Stasik

Second: Ms. Esty

VOTE: 4 – 0

Selectmen's Goals

Ms. Esty suggested taking the written goals submitted by each member home and working on them. Mr. Giombetti agreed.

Selectmen's Reports

Mr. Giombetti

Mr. Giombetti had nothing additional to report.

Mr. Stasik

Mr. Stasik mentioned that the Town Meeting Act – so called article 5, was recommended favorably at the state house, although it had gone to a difficult committee for review.

Ms. Esty

Ms. Esty had further questions about the active duty benefits that she wished to review further with Town Counsel. She had attended an MPO meeting, and given the schedule to Mr. Stasik, who was the alternate for the committee.

Ms. Murphy

Ms. Murphy announced that she had made the Selectmen's appointments, but would add the Litigation Liaison Committee.

Ms. Murphy had attended a legislative breakfast the prior week. She also stated that she believed she had heard that Congress had voted to restore the CDBG funds, and increased it nationally as well.

Ms. Esty asked about sex offenders and air quality.

Consideration of the open session minutes for February 3, 2005

MOVED: To table the open session minutes for February 3, 2005.

Motion: Ms. Esty

Second: Mr. Stasik

VOTE: 4 – 0

MOVED: To adjourn at 11:15PM.

Motion: Mr. Stasik

Second: Mr. Giombetti

VOTE: 4 – 0

Respectfully submitted,

Charles J. Sisitsky, Clerk